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OLC 75-1007

16 April 1975

MEMORANDUM FOR THE RECORD

SUBJECT: Implementation of the Privacy Act of 1974

1. Jim Kronfeld, Counsel, House Government Operations Subcommittee on Government Information and Individual Rights, called. He met with Mrs. Abzug yesterday and they discussed future hearings on legislation. Mrs. Abzug asked if we had submitted a proposal for an exemption on Intelligence Sources and Methods. Kronfeld told her that he had reviewed an early draft which I had shown to him.

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2. DDA is responsible for implementing the Privacy Act of 1974. [] OGC, is of the opinion that the Director, during the hearing before Chairwoman Abzug, in effect acknowledged that CIA would receive and handle requests from individuals under the Privacy Act. [] feels we are now bound in our implementation of the Privacy Act to specifically include in our regulations the right of an individual to determine what information CIA has concerning him. I disagree. The Director did acknowledge that we are handling requests; however, his reference was to our present handling which is under the Freedom of Information Act. He stated that we could handle requests under the Privacy Act if granted an exemption for sources and methods and if court review is limited. This was presented as an alternate proposal to striking our exemption altogether. Pending any affirmative action by the Abzug Subcommittee, we should implement the Act on the basis of the exemption as it is now in law and not erode our exemption. We could state in our implementing regulations of the Privacy Act that we handle requests from individuals for information concerning them under the FOI Act and reference our implementing FOI regulations.

3. Jim Kronfeld, Counsel, House Government Operations Subcommittee on Government Information and Individual Rights called me yesterday and Chairwoman Abzug has no immediate plans to resume hearings on the Act. She did ask if we had submitted a substitute proposal and Kronfeld told her he has a preliminary draft.

4. Jack Blake, DDA, concurs in the position of not eroding our exemption and this was reflected in the first status report to OMB on CIA's implementation of the Privacy Act.

5. If the term "intelligence sources and methods" is substituted for "systems of records maintained by the Central Intelligence Agency," the present term in the Privacy Act, there is no problem IF the term is defined broadly to include systems of records. In effect, the exemption would be unchanged. If not so broadly interpreted we could have serious problems. There would be three categories of Agency information affected by the Act:

- (a) sources and methods;
- (b) classified information; and
- (c) unclassified information.

If our proposal for limited court review for intelligence sources and methods is accepted, there would be two standards of court review; limited court review for intelligence sources and methods and full court review for classified and unclassified information. Where material is mixed, the problem is compounded. This can be even further complicated by court interpretation of the definition of sources and methods should there be litigation.

6. I would urge that there be an agreed upon policy of:

- (a) not pressing for a change in our exemption to the Privacy Act;
- (b) implementing the Privacy Act as stated in present law.



Assistant Legislative Counsel

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Attachment

Distribution:

Original - OLC Subject 1 - DDA 1 - C/IRS

1 - OLC Chrono 1 - OGC

1 - Legislation 2

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OLC 75-0645

27 March 1975

MEMORANDUM FOR THE RECORD

SUBJECT: CIA Exemption in the Privacy Act of 1974
Amendments to Freedom of Information Act
Amendments of 1974

1. At the request of Jim Kronfeld, Counsel, House Government Operations Subcommittee on Government Information and Individual Rights, I discussed with him substituting the present CIA exemption in the Privacy Act with an exemption for Intelligence Sources and Methods. We discussed the proposal suggested by the Director during his testimony on 5 March 1975.

2. Kronfeld made clear that there is not a strong move in the Committee to strike the Agency exemption. Kronfeld raised the same concern that the Committee faced last year when our exemption was considered i.e., the reluctance to grant an exemption for Intelligence Sources and Methods since the term is broad and undefined in the National Security Act of 1947 and could extend to other agencies. Kronfeld also stressed that the Select Committees of both the House and Senate will undoubtedly make findings and recommendations which will amend the Agency's basic charter to define and make clear the Agency's domestic and foreign responsibilities and the term intelligence sources and methods. He felt that it would be premature for the Committee to address itself to a change in the Agency's exemption until this action is completed.

3. Kronfeld suggested that we discuss this matter with Chairman Church and Chairman Nedzi of the Select Committees of the House and Senate and suggest that they submit letters to Chairman Brooks of the full Committee and to Chairwoman Abzug suggesting that the Subcommittee defer its consideration of the Agency's exemption until the Select Committees have made their findings and recommendations. Kronfeld felt that Chairman Brooks would be agreeable and that Chairwoman Abzug would also go along, particularly since she has high respect for Senator Church.

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objections to our pursuing at this time an exemption on the basis of Intelligence Sources and Methods was an honest one. The complaint, of course, is the inability to get a handle on what we are wanting to protect. This is a complicated matter regardless of the current investigations by the Select Committees. Rather than now pursuing an exemption for Intelligence Sources and Methods, the action recommended by Kronfeld appears sound. Kronfeld felt that a strong point in our favor is the present policy, despite the blanket Agency exemption in the Privacy Act, to respond under Freedom of Information Act to individuals who have submitted requests to the Agency to determine if we maintain any information concerning them.

5. Kronfeld noted that Representative McCloskey (R., Cal.) has not yet developed a specific proposal to amend the Freedom of Information Act Amendments of 1974 to relieve the unreasonable demands and burdens on Executive agencies as he had announced. This has been due to demands of other business, particularly Vietnam. Kronfeld said Internal Revenue was requested informally to submit a proposal. Kronfeld understands our position to exempt sources and methods and for limited court review and will advise us when we may submit a proposal. He is aware that the Agency is compiling data on the problems faced, e.g., manpower drain, costs, etc. He was of the opinion that they will not focus on Freedom of Information until June.

6. Accordingly, it is recommended that:

a. The Agency discuss with Chairman Church and Chairman Nedzi the action pending by Chairwoman Abzug to strike the Agency's exemption in the Privacy Act and suggest that they submit letters to Chairman Brooks and Chairwoman Abzug requesting that they defer further consideration of our exemption until the Select Committees have made their findings and recommendations. However, OLC and OGC would continue to develop a proposal to exempt intelligence sources and methods and to limit court review for submission at any time.

b. OLC and OGC finalize the proposal to amend Freedom of Information Act to exempt intelligence sources and methods and to limit court review.



Assistant Legislative Counsel

Distribution:

Original - OLC Subject 1 - OLC Chrono 1 - OGC
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Exemption for Intelligence Sources and Methods
As a Substitute for Present CIA Exemption
In Privacy Act of 1974

1. Add a new subsection (8) in section (a) "DEFINITIONS" the following:

"(8) The term 'foreign intelligence information or personal information relating to intelligence sources and methods' means sensitive information concerning--

- (A) methods of collecting foreign intelligence;
- (B) sources of foreign intelligence, whether human, technical, or other; or
- (C) methods and techniques of analysis and evaluation of foreign intelligence which, in the interests of the security of the foreign intelligence activities of the United States, has been specifically designated for limited or restricted dissemination or distribution, pursuant to authority granted by law or Directive of the National Security Council, by a department or agency of the United States Government which is expressly authorized by law or by the President to engage in intelligence activities for the United States. "

2. Add as a new subsection (6) in section (g) "CIVIL REMEDIES" following:

"(6) A civil suit involving intelligence sources and methods exempt under subsection (j)(1) of this section may be brought to determine if the designation was in accordance with the definition prescribed in subsection (a)(8), provided; however, that the court shall not consider the case de novo but may conduct such in camera inspection of the requested records, or any part thereof, if it is unable to resolve the matter on the basis of an affidavit and other information submitted by the parties. In conjunction with its in camera examination, the court may consider further argument, or an ex parte showing by the Government, in explanation of the withholding. If there has been filed in the

record an affidavit by the head of the agency certifying that he has personally examined the documents withheld and has determined after such examination that they should be withheld under the definition prescribed in subsection (a)(8), the court shall sustain such withholding unless, following its in camera examination, it finds the withholding is without a reasonable basis under such criteria."

3. Strike existing (j)(1) and substitute the following:

"(1) foreign intelligence information or personal information relating to intelligence sources and methods designated for protection from unauthorized disclosure pursuant to 50 U.S.C.A. 403."